

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEYER CORPORATION, U.S.,	:	
	:	
Plaintiff-Appellant,	:	
	:	Appeal No.: 2023-1570
v.	:	
	:	
UNITED STATES,	:	
	:	
Defendant-Appellee.	:	
	:	

CONSENT MOTION FOR AN EXTENSION OF TIME

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Dated: August 10, 2023

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEYER CORPORATION, U.S.,	:	
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Plaintiff-Appellant,	:	
	:	Appeal No.: 2023-1570
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CONSENT MOTION FOR AN EXTENSION OF TIME

Pursuant to Rules 26(b) and 27, Federal Rules of Appellate Procedure, and Rules 26 and 27, Rules of the United States Court of Appeals for the Federal Circuit, the United States (the Government), defendant-appellee, respectfully moves this Court for a fourteen (14) day extension of time in which to file its response to plaintiff-appellant's opening brief. The Government's brief is currently due on August 17, 2023, and the requested extension would extend this deadline to, and including, August 31, 2023. This is defendant-appellee's third request for an extension of time for this purpose. Taken together the three extensions amount to a period of seventy-four (74) days, measured from the initial due date for the Government's brief.

On August 9, 2023, John M. Peterson, of the law firm Neville Peterson LLP, counsel for plaintiff-appellant, advised that plaintiff-appellant consents to the

Government's requested extension of time.

Good cause exists for this motion. When assessing whether good cause has been shown, "the primary consideration is whether the moving party can demonstrate diligence." *High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1319 (Fed. Cir. 2013) (citations omitted) (discussing "good cause" in the context of Federal Rule of Civil Procedure 16(b)). Although counsel for the Government has made substantial progress in preparing the response brief in this appeal, additional time is needed to complete the review of the trial record and to complete the drafting of our response.

Further, as noted in the attached declaration, in addition to preparing the response to plaintiff-appellant's opening brief, some delay in completing the response brief can be ascribed to Government counsel's other work obligations including, among other things, drafting a supplemental brief in *United States v. Aegis Security Insurance Company*, Court No. 20-03628 (Ct. Int'l Trade); working with the client agency to prepare discovery responses in *United States v. Aegis Security Insurance Company*, Court No. 20-03628 (Ct. Int'l Trade); preparing witnesses for upcoming depositions, and defending the first noticed deposition in *MTD Consumer v. United States*, Court No. 22-00233 (Ct. Int'l Trade); conferring with agency counsel and opposing counsel regarding whether a U.S. Customs and

Border Protection penalty action referral may be amenable to resolution; providing on-going assistance with a Trade Fraud Task Force investigation concerning possible transshipping; and revising a draft a complaint to commence a penalty action and engaging in extensive discussions regarding a possible resolution of that matter.

The requested extension is necessary to allow undersigned counsel adequate time to complete the preparation of the Government's response, to obtain the necessary supervisory review, and to finalize our brief for filing with the Court.

For these reasons, defendant-appellee respectfully requests that its consent motion for an extension of time to file its response brief be granted.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

PATRICIA M. McCARTHY
Director

JUSTIN R. MILLER
Attorney-In-Charge
International Trade Field Office

By: Aimee Lee
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/s/ Beverly A. Farrell
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Attorneys for Defendant-Appellee

Dated: August 10, 2023

CERTIFICATE OF SERVICE

I hereby certify that, on August 10, 2023, a copy of the foregoing Consent Motion for an Extension of Time in Appeal No. 23-1570 was filed electronically. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Beverly A. Farrell
Beverly A. Farrell
Senior Trial Attorney

CERTIFICATE OF COMPLIANCE PURSUANT TO FRAP 32

I, Beverly A. Farrell, a Senior Trial Attorney in the Office of the Assistant Attorney General, Civil Division, Commercial Litigation Branch, International Trade Field Office, who is responsible for the foregoing motion, relying upon the Microsoft Word count feature of the word processing program used to prepare the brief, certify that this brief complies with the type-volume limitation under Rule 32 (g)(1), and contains 466 words.

/s/ Beverly A. Farrell
Beverly A. Farrell

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	:	

DECLARATION

Beverly A. Farrell deposes and says:

1. I am the attorney in the International Trade Field Office, Civil Division, U.S. Department of Justice, primarily responsible for this appeal.
2. The brief of the United States (the Government), defendant-appellee, is currently due to be filed under the Rules of this Court on or before August 17, 2023.
3. On August 9, 2023, John M. Peterson, of the law firm Neville Peterson LLP, counsel for plaintiff-appellant, advised that plaintiff-appellant consents to the Government's motion seeking an extension of time.
4. An extension of time is requested in order to allow counsel to complete its review of the trial record and to complete the drafting of our response.
5. Further, in addition to preparing the response to plaintiff-appellant's opening brief, some delay in completing the response brief can be ascribed to

Government counsel's other work obligations including, among other things, drafting a supplemental brief in *United States v. Aegis Security Insurance Company*, Court No. 20-03628 (Ct. Int'l Trade); working with the client agency to prepare discovery responses in *United States v. Aegis Security Insurance Company*, Court No. 20-03628 (Ct. Int'l Trade); preparing witnesses for upcoming depositions, and defending the first noticed deposition in *MTD Consumer v. United States*, Court No. 22-00233 (Ct. Int'l Trade); conferring with agency counsel and opposing counsel regarding whether a U.S. Customs and Border Protection penalty action referral may be amenable to resolution; providing on-going assistance with a Trade Fraud Task Force investigation concerning possible transshipping; and revising a draft a complaint to commence a penalty action and engaging in extensive discussions regarding a possible resolution of that matter.

6. It is anticipated that no further extension of time will be needed to prepare the final draft of defendant-appellee's response reply brief and file it with the Court.

/s/ Beverly A. Farrell
BEVERLY A. FARRELL
Senior Trial Attorney

Dated: August 10, 2023